

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the matter of)
)
Revision of the Commission's Rules To)
Ensure Compatibility with Enhanced 911) CC Docket No. 94-102
Emergency Calling Systems)
)
)
E911 Compliance Deadlines for Non-)
Nationwide Tier III CMRS Carriers)

Adopted: October 10, 2003

Released: October 10, 2003

By the Commission:

ORDER TO STAY

I. INTRODUCTION

1 The Commission currently has pending before it petitions from a number of small, non-nationwide Commercial Mobile Radio Service (CMRS) providers, referred to as "Tier III"¹ carriers. These Tier III carriers are seeking temporary relief from the application of Phase I and various Phase II enhanced 911 (E911) deployment and/or accuracy obligations imposed under section 20.18(d)-(h)² of the Commission rules (the rules). Specifically, there are currently three main categories of pending Tier III petitions that seek a stay from various E911 Phase I and Phase II deployment obligations in section 20.18 of the Commission's rules: 1) waiver petitions, seeking the same or similar relief as that granted in the *Non-Nationwide Carriers Order*;³ 2) waiver petitions seeking more extensive relief than was already granted to the petitioners in the *Non-Nationwide Carriers Order*;⁴ and 3) a petition for temporary

¹ Tier III carriers are defined as non-nationwide CMRS providers with no more than 500,000 subscribers. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14848, para. 24. (2002) (*Non-Nationwide Carriers Order*).

² 47 C.F.R. § 20.18(d)-(h). See II A, *infra*, for a brief discussion of these requirements.

³ *Non-Nationwide Carriers Order* 17 FCC Rcd 14841.

⁴ The waiver requests fall into three subcategories, listed in Appendix A 1, A 2, and Appendix B. Appendix A 1 lists the carriers requesting the same relief as that which was granted to other Tier III carriers in the *Non-Nationwide Carriers Order*. Appendix A 2 lists the carriers requesting other, more extensive relief, in addition to the grant of the same relief which was provided to other Tier III carriers in the *Non-Nationwide Carriers Order*. Appendix B lists carriers requesting an extension of the stay granted to them in the *Non-Nationwide Carriers Order*. See II B, *infra* for the description of the implementation dates provided for Tier III carriers in the *Non-Nationwide Carriers*

forbearance,⁵ pursuant to the statutory forbearance authority provided in section 10(a) of the Communications Act of 1936, as amended (the Act),⁶ from the enforcement of the accuracy and reliability requirements of section 20.18(h) of the rules until January 1, 2006.⁷

2. We believe that all American consumers, including those who live, work, vacation in, or travel through the least populated areas of the United States, should have comparable E911 wireless service. Because of the vital public interest in providing E911 service, the Commission will not grant relief from the implementation of its E911 rules unless extraordinary circumstances exist. In the instant case, with the greatest reluctance we temporarily stay the application of various provisions of section 20.18 of the rules to certain Tier III carriers on the terms set forth in this Order, to prevent carriers that have pending petitions for relief from suffering hardships due to uncertainty with regard to their compliance with existing Commission requirements or deadlines. However, we emphasize that it is the obligation of all carriers to comply with the E911 rules in the general public interest. If a carrier anticipates that, despite its best efforts, it may be unable to meet its E911 obligations, it is the carrier's burden to demonstrate in a timely petition for relief that extraordinary circumstances prevent its immediate compliance and that good cause exists for a grant of relief. In the public interest context of the E911 rules, the threshold for good cause is very high. This Order provides further guidance as to the type of showing that would meet a carrier's substantial burden of demonstrating, under the E911 good cause standard, that the relief the carrier seeks is as narrowly tailored as possible; that the carrier is taking all possible concrete steps to achieve full compliance as quickly as possible; and that the grant of relief would therefore not be contrary to the public interest.

3. With respect to the pending waiver requests from Tier III carriers, we now grant these pending petitions to the extent that they request no greater relief than was provided in the *Non-Nationwide Carriers Order*.⁸ With respect to requests for other relief from other provisions of section 20.18 of the rules or for greater extension of the deployment deadlines than that provided in the *Non-Nationwide Carriers Order*, we stay⁹ the application of sections

Order. See also *Non-Nationwide Carriers Order*, 17 FCC Rcd 14849, paras. 26-27 and 17 FCC Rcd 14851, paras. 32-33 for the schedule of implementation dates provided in that *Order*.

⁵ See Petition for Forbearance by Tier III Coalition, filed November 19, 2002. See Appendix C for a list of those carriers included in the Coalition.

⁶ Section 10(a) of the Act provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission determines that: (1) enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory, (2) enforcement of such regulation or provision is not necessary for the protection of consumers, and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a).

⁷ The twelve Tier III carriers who petitioned for forbearance are listed in Appendix C.

⁸ The carriers fully covered by this relief are listed in Appendix A 1. The carriers that are granted their requests only in part are listed in Appendix A 2.

⁹ See section 1.44(e) of the rules, which gives the Commission the discretion to grant temporary relief. See also generally section 4(i) of the Communications Act of 1936, 47 U.S.C. § 4(i), which authorizes the Commission to issue orders necessary to execute its functions. We note that petitions specifically requesting a stay, pursuant to sections 1.41 and 1.43 of the rules, as well as other relief, were filed on behalf of rural carriers by a rural association

20.18(d), (e), (f), (g), and/or (h), as applicable, from September 1, 2003, until we rule on those carriers' waiver petitions or six months from the release date of this Order, whichever is sooner. We will not act on the merits of these waiver petitions until at least one month from the release date of this Order (but no later than six months from the release date of this Order) in order to allow waiver petitioners additional time to provide the Commission with supporting evidence that substantiates their claims for relief under the good cause standard. With respect to the Tier III carriers that have petitioned for forbearance under section 10(a) of the Act, we stay the application of section 20.18(h) until the Commission acts on the forbearance petition or six months from the release date of this Order, whichever is sooner.¹⁰ Any grant of relief or stay that the Commission provides in this Order applies only to those Tier III carriers listed in the Appendices, on the terms provided herein.

4. While we do not here rule on the merits of those petitions that seek a grant of relief for a time period that extends beyond the dates provided for in this Order, we view the grant of any further extension of an E911 deadline with extreme gravity, in view of the countervailing public interest that weighs so heavily against implementation delay. We therefore provide the guidance set forth below as to the heavy burden a carrier seeking further extension must bear in order to demonstrate that such extraordinary relief is justified.

II. BACKGROUND

A. E911 Phase I and Phase II Requirements under Section 20.18 of the Rules

5. Wireless carriers covered by section 20.18 of the rules (licensees) must provide E911 wireless services in accordance with the deployment schedule and accuracy and reliability requirements set forth in section 20.18(d)-(h) of the rules. E911 deployment is a two-phase process, designed to provide a requesting Public Safety Answering Point (PSAP) with more precise location information in each phase. Phase I E911 service is governed by section 20.18(d), which requires that licensees provide the designated PSAP with the telephone number of any mobile handset originating a 911 call and with the location of the cell site or base station that received that call.

6. Phase II E911 is governed by section 20.18(e)-(h) of the rules. The goal of Phase II is to provide the designated PSAP with Automatic Location Identification (ALI) of the handset

in its representational capacity and by individual counsel. To the extent that the Stay provided by this Order grants the relief provided in the *Non-Nationwide Carriers Order*, requests for relief made pursuant to any other pending petitions are also granted to those carriers requesting no more relief than was granted in the *Non-Nationwide Carriers Order*. All other matters set forth in the pending Tier III petitions affected by this Order will be considered when the Commission rules on the merits of those specific petitions. Issues involving the request for waiver of the King County demarcation point, however, will be the subject of a separate proceeding.

¹⁰ Under section 10(c) of the Act, any forbearance petition filed under section 10 shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a). 47 U.S.C. § 160(c). The Commission received the petition for forbearance at issue on November 19, 2002; accordingly, the one-year period ends on November 19, 2003, unless extended.

placing the 911 call. Section 20.18(e)¹¹ requires licensees to provide the designated PSAP with the location of all 911 calls by latitude and longitude in accordance with the accuracy and reliability standards set forth in section 20.18(h).¹² The accuracy required (generally between 50 and 300 meters) depends on whether the licensee has chosen a network-based or handset-based location technology.

7 A carrier is free to use any location technology as long as the technology can meet the accuracy and reliability requirements of section 20.18(h), within the deployment schedule set forth for handset- and network-based location technologies, which are governed by sections 20.18(f) and 20.18(g), respectively. These deployment deadlines were modified in the *Non-Nationwide Carriers Order*, with regard to certain Tier II and Tier III carriers that previously sought waiver relief.¹³

B. Non-Nationwide Carriers Order

8 On July 26, 2002, the Commission granted a temporary stay of the application of certain specific E911 Phase II deadlines set forth in sections 20.18(f) (network-based location technology deployment) and 20.18(g) (handset-based technology deployment) of the rules¹⁴ for certain Tier II and Tier III carriers. The Commission stayed the deployment deadlines by 13 months for Tier III carriers who petitioned for waiver relief.¹⁵ The specific deployment extensions provided in the *Non-Nationwide Carriers Order* to those Tier III carriers that petitioned for relief are as follows.

The Tier III licensees that employ a network-based location technology must provide Phase II 911 enhanced service to at least 50 percent of the PSAP's coverage area or population beginning September 1, 2003 or within 6 months of a PSAP request, whichever is later, and to 100 percent of the PSAP's coverage area or population by September 1, 2004 or within 18 months of such a request, whichever is later.¹⁶

The Tier III licensees who employ a handset-based location technology, without respect to any PSAP request for deployment of Phase II E911, must begin selling and activating location-capable handsets no later than September 1, 2003; ensure that at least 25 percent of all new handsets activated are location-capable no later than November 30, 2003; ensure that at least 50 percent of all new handsets are location-capable no later than May 31, 2004; ensure that 100 percent of all new digital handsets activated are location-capable no later than November 30, 2004; and ensure that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005.

¹¹ See 47 C.F.R. § 20.18(e).

¹² See 47 C.F.R. § 20.18(h).

¹³ See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14849, paras. 26-27 and 14851, paras. 32-33 (providing revised schedule of implementation dates). Only the petitioners listed in Appendix A of the *Non-Nationwide Carriers Order* were covered by that Order. See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14856, Appendix A.

¹⁴ 47 C.F.R. §§ 20.18(f)-(g).

¹⁵ Appendix B of this Order lists those carriers covered in the *Non-Nationwide Carriers Order* that have pending petitions for further relief before the Commission.

¹⁶ See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14851, para. 32.

Once a PSAP request is received, the licensee must, in the area served by the PSAP, within six months or by September 1, 2003, whichever is later, install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II E911 service; and begin delivering Phase II E911 service to the PSAP.¹⁷

9. Since the release of the *Non-Nationwide Carriers Order*, several Tier III carriers not subject to the *Non-Nationwide Carriers Order* have filed waiver requests asking that the Commission apply the same or similar E911 Phase II deadlines to them, as outlined in the *Non-Nationwide Carriers Order*.¹⁸ On September 11, 2002, NENA, APCO, and NASNA (Public Safety Organizations) filed a joint opposition to these requests.¹⁹ The Public Safety Organizations characterize any requests not covered by the *Non-Nationwide Carriers Order* as "woefully tardy" as a matter of procedure.²⁰ The Public Safety Organizations suggest that Petitioners be referred to the Enforcement Bureau, to explain their tardiness.²¹

C. Waiver Petitions

10 As described in paragraph nine above, carriers not covered in the *Non-Nationwide Carriers Order* have filed seven waivers and one stay covering a total of nine carriers which seek no greater relief (the same or less) than was granted to other Tier III carriers in the *Non-Nationwide Carriers Order*.²² In addition, 37 stays and/or waivers covering approximately 80 carriers seek relief beyond the timeframes granted in the *Non-Nationwide Carriers Order*.²³ Twenty-three of these waiver requests and one stay/waiver request were filed by Tier III carriers seeking further relief from various requirements of section 20.18 of the rules, beyond the extension of deployment deadlines that they had already been granted in the July 2002 *Non-Nationwide Carriers Order*.²⁴

D. Forbearance Petition

11 On November 20, 2002, a group of twelve wireless carriers ("Tier III Coalition") filed a petition for forbearance under section 10(a) of the Act from the enforcement of the E911

¹⁷ *Non-Nationwide Carriers Order*, 17 FCC Rcd 14851, para 33

¹⁸ See Appendix A 1 for a list of Tier III carriers (Petitioners) that filed waiver requests for the same, or in one case, less relief, as that granted in the *Non-Nationwide Carriers Order*

¹⁹ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Comments of NENA (National Emergency Number Association), APCO (Association of Public Safety Officials-International, Inc.), and NASNA (National Association of State Nine One One Administrators)(collectively, "Public Safety Organizations"), CC Docket No. 94-102 (September 11, 2002).

²⁰ Public Safety Organizations Comments at 2.

²¹ Public Safety Organizations Comments at 3

²² See Appendix A 1 for a list of Tier III carriers that are requesting the same or similar relief as that granted to the Tier III carriers in the *Non-Nationwide Carriers Order*

²³ See Appendix A 2 and Appendix B for a list of Tier III carriers that are requesting relief beyond that granted to the Tier III carriers in the *Non-Nationwide Carriers Order*

²⁴ See Appendix B for a list of Tier III carriers that are requesting relief beyond that granted to them in the *Non-Nationwide Carriers Order*

accuracy standards for Tier III carriers until January 1, 2006.²⁵ The petition does not seek to delay the deployment of Phase II technologies triggered by PSAP requests, or forbearance from any other deployment deadlines. The Coalition argues that forbearance from enforcement of the accuracy and reliability standards of 20.18(h) of the rules through this period is necessary to allow sufficient time for the collection of accuracy and reliability information to set an economically attainable level of location accuracy for rural environments. Specifically, the Coalition contends that no commercially available Phase II-compliant location system can be economically deployed and satisfy the accuracy standards throughout a licensed rural service area, and that there is no record of support for imposing the same accuracy standards in rural as in urban areas.

III. DISCUSSION

A. Good Cause Exists to Grant Relief to Those Carriers Seeking No Greater Relief than the Relief Granted in the *Non-Nationwide Carriers Order*

12. The Tier III (CMRS) carriers listed in Appendix A argue that their situations and their waiver justifications are exactly the same as those found in the *Non-Nationwide Carriers Order*, thus warranting the same relief.²⁶ Like those carriers granted relief, they, too, were unable in the relevant time period to secure commitments from vendors for necessary technology upgrades and experienced equipment delays, including the availability of network components and handsets.²⁷ They argue that the underlying purpose of the Commission's rules will not be frustrated by a grant of the requested retrospective, limited, temporary relief because such a grant will not delay roll-out of E911 in their particular markets.²⁸

13. The Commission is deeply troubled by the failure of these carriers to comply with our deadlines. We are particularly concerned about untimely E911 petitions because the public interest is affected by delays in E911 implementation. Despite these serious reservations, we nonetheless believe, from a review of these petitions and our monitoring of E911 deployment, that, on balance, an extension of the Phase II deployment schedule adopted in the *Non-Nationwide Carriers Order* to these Tier III carriers is warranted because these Tier III carriers have also demonstrated that they were unable to comply due to circumstances beyond their control during the relevant period. Because this relief is retrospective only, we conclude that it will not unduly harm the public interest. However, we must strongly emphasize that future

²⁵ The twelve Tier III carriers that petitioned for forbearance and are granted this temporary relief are listed in Appendix C.

²⁶ We note that in *Non-Nationwide Carriers Order*, the Commission did not distinguish between carriers that had filed their petitions within the filing deadline and those that filed a late petition after the deadline passed. The Commission found that all small carriers had the same deployment challenges and have a legitimate need for a stay of the initial Phase II implementation deadlines. See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14844, para. 11.

²⁷ See e.g., Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, North Carolina RSA 1 Partnership's Petition for Limited Waiver of Section 20.18(g) of the Commission's Rules, filed September 27, 2002 at 6, Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, ComScape Telecommunications of Wilmington License, Inc. Petition at 3-4, and Duluth PCS, Inc. Petition at 4-5, see also Appendix A 2.

²⁸ See e.g., North Carolina RSA 1 Partnership Petition at 5 and 8, and Duluth PCS, Inc. Petition at 8.

waivers should not generally be warranted, especially in light of the vital public interest in implementing Phase II. In view of the importance of our E911 rules to the public interest, we expect to take any steps necessary to ensure that carriers take their obligations seriously.

14 Moreover, by applying the same deployment deadlines to these other similarly situated Tier III carriers, we recognize their common circumstances and clarify the Phase II schedules for both the carriers and public safety officials. Those officials and the public in general, will have clearer information on when Phase II requests should be fulfilled.²⁹ An extension of the Phase II deployment schedule adopted in the *Non-Nationwide Carriers Order* to other Tier III carriers that have filed waiver requests for no greater relief should facilitate ultimate E911 compliance by enabling similarly situated non-nationwide carriers to focus upon their upcoming implementation deadlines to provide an efficient Phase II rollout, thereby serving the public interest.

15 While we agree with the Public Safety Organizations that all Tier III waiver requests should have been timely filed, we nonetheless do not believe that further referral of these late filing carriers to the Enforcement Bureau would be productive at this time. With respect to E911 deployment, the Commission has not hesitated to exercise its enforcement authority in circumstances in which such action served the public interest.³⁰ However, we note that this Order provides only retrospective relief for a small number of the nation's smallest carriers on the same terms as was already granted to similarly situated Tier III carriers in the *Non-Nationwide Carriers Order*. The Commission trusts that those carriers afforded that retrospective relief will now focus their resources on overcoming any obstacles that they may face in maintaining timely compliance with their current E911 deployment obligations. With respect to those Tier III carriers to whom this Order grants a temporary stay, the Commission emphasizes that further relief will be granted only upon a showing of extraordinary circumstances. The Commission will expect that any Tier III carrier that has been granted relief in this Order or that may be granted temporary relief in the future, will adhere to its revised deployment schedule. The Commission, will, if necessary, target for enforcement action those carriers who fail to take the concrete steps necessary to implement, in good faith, any revised deployment schedule.³¹

16. These Tier III carriers are therefore subject to the same deployment deadlines as were adopted in the *Non-Nationwide Carriers Order*.³² Additionally, because the initial September 1, 2003 handset deadline for Tier III Carriers set forth in the *Non-Nationwide Carriers Order* has passed, effective from September 1, 2003, we grant temporary stays to those

²⁹ See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14846, para 17.

³⁰ See e.g. AT&T Wireless Services, Inc., Washington, DC, Notice of Apparent Liability and Forfeiture, File No. EB-02-TS-018 (May 20, 2002), T-Mobile USA, Washington, DC, Notice of Apparent Liability and Forfeiture, File No. EB-02-TS-624 (March 5, 2003).

³¹ Further, as set forth Section IV below, this Order requires every Tier III carrier listed in the Appendices, to file an interim report on its deployment progress. The Commission believes that the interim reports will give all stakeholders – carriers, technology vendors, public safety entities, and consumers – greater information about when each Tier III carrier will fully implement Phase II E911 service.

³² *Non-Nationwide Carriers Order*, 17 FCC Rcd 14849, paras 26-27 and 17 FCC Rcd 14851, paras 32-33 for the schedule of implementation dates provided in that Order

carriers who requested time beyond the deadlines established in the *Non-Nationwide Carriers Order* as discussed below.

B. Temporary Stay of the E911 Implementation Rules for Tier III Carriers Seeking Waiver and/or Forbearance Relief Beyond the Deadlines Established in the *Non-Nationwide Carriers Order*

17 There is evidence suggesting that under certain conditions, small carriers may face extraordinary circumstances in timely meeting one or more of the deadlines for Phase II deployment and that relief may therefore be warranted. The Commission is working to minimize these difficulties, while ensuring that the public interest goals of E911 deployment are not unnecessarily impeded. This evidence suggests that in some individual cases there may be good cause to grant temporary relief. In other cases, waiver requests may be unsupportable. However, as we explain more fully below, having considered the pending petitions, we cannot determine, without certain supplemental information, whether the relief requested is merited. In most instances, for example, we currently lack substantial evidence that the relief is as narrowly tailored as possible or that the petitioner has put in place a clear path to compliance, which are important prerequisites to granting relief from the Commission's E911 rules.

18 To the extent that cooperative efforts between and among carriers, vendors, PSAPs, and other stakeholders may narrow the need for relief, the Commission expects all parties to work together to deploy Phase II in the interest of public safety and national security. The Commission stands ready to facilitate such efforts and to provide redress, to the extent of its authority, to any stakeholder whose deployment efforts are hindered by the failure of another stakeholder to make good faith efforts to facilitate deployment.³³

19 In addition, in order to ensure that any waiver relief granted is consistent with the standards for waiver relief set forth in the *E911 Fourth Memorandum Opinion and Order*³⁴ and the *Non-Nationwide Carriers Order*,³⁵ the Commission is providing below further guidance on the type of factual showing that it suggests would provide the type of evidentiary support for any claim for waiver relief under the applicable standards. The Commission generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.³⁶ Petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be

³³ Indeed, the Commission is hosting its second Coordination Initiative on October 29, and 30, 2003. The Commission is planning to devote substantial time in the upcoming Coordination Initiative to rural issues such as technical and economic obstacles Tier III carriers may face in rural deployment, as well as technical accuracy measurement issues. In addition, we applaud the efforts of APCO, NASNA, NENA, and ESIF to coordinate efforts among stakeholders.

³⁴ See generally, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442 (2000) (*E911 Fourth Memorandum Opinion and Order*).

³⁵ See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14853, para. 41.

³⁶ See *WAT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) ("*WAT Radio*"); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) ("*Northeast Cellular*"). Compare generally, section 1.925 of the rules.

inequitable, unduly burdensome, or contrary to the public interest.³⁷ The good cause standard, as applied in the E911 waiver context, is discussed further in Section III C below, which discusses generally the showing expected to demonstrate good cause for a grant of waiver relief.

20. For the foregoing reasons, with respect to a Tier III carrier who has petitioned for temporary waiver pursuant to sections 1.3 and 1.925³⁸ of the rules that is beyond the deadlines set forth in the *Non-Nationwide Carriers Order*, we stay the application of sections 20.18(d), (e), (f), (g), and/or (h) until we rule on that carrier's waiver petition or six months from the release date of this Order, whichever is sooner. We will not act on these waiver petitions until at least one month from the release date of this Order (but no later than six months from the release date of this Order) in order to allow waiver petitioners additional time to provide the Commission with any supporting evidence that they wish to add to their pending filings, in view of the guidance provided in this Order. The Tier III carriers seeking waivers that are covered by this temporary stay are listed in Appendix A 2. and Appendix B.³⁹ With respect to the Tier III carriers who have petitioned for forbearance under section 10(a) of the Act, we stay the application of section 20.18(h) until the Commission acts on the forbearance petition or six months from the release date of this Order, whichever is sooner.⁴⁰ These Tier III carriers who have petitioned for forbearance are listed in Appendix C.

21. The Commission finds that this approach will allow it the opportunity to take account of any insurmountable problems that a Tier III carrier may be facing in meeting the Commission's implementation deadlines in any portion of its footprint, and the Commission will act expeditiously in this matter.⁴¹ It will also best ensure that the general public interest goals of E911 wireless implementation are met by providing only a temporary stay, limited to the provision(s) of section 20.18 of the rules which the particular Tier III carrier believes it cannot meet. The Order will therefore have only minimal effect on the continued deployment of E911 Phase I and II services. The Commission expects that carriers will continue to deploy Phase I and Phase II throughout every region of the nation to the greatest extent and with the utmost speed possible. We note that, at this time, we do not contemplate any blanket relief from the ultimate handset implementation date of December 31, 2005, which is currently in place for

³⁷ *WAT Radio*, 418 F.2d 1159.

³⁸ Section 1.3 of the rules, 47 C.F.R. § 1.3, provides in pertinent part: "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." Section 1.925 of the rules, 47 C.F.R. § 1.925(a)(3)(1), provides further guidance with regard to the showing upon which the Commission may grant a waiver: (i) "The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest, or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rules(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

³⁹ We note that some carriers have pending petitions for both forbearance and waiver relief.

⁴⁰ Under section 10(c) of the Act, any forbearance petition filed under section 10 shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a). 47 U.S.C. § 160(c). The Commission received the petition for forbearance at issue on November 19, 2002, accordingly, the one-year period ends on November 19, 2003 unless extended.

⁴¹ See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14843, n. 13, para. 7 (internal citation omitted).

CMRS carriers.

C. Opportunity to Supplement the Record during the Stay

22. We remind carriers filing for waiver relief that we provided guidance as to standards for that relief in the *Non-Nationwide Carriers Order*,⁴² as follows:

The Commission also recognized, . . . that requests for waiver may be justified based on specific showings and discussed standards for such requests in the *E911 Fourth Memorandum Opinion and Order*.⁴³ In the *E911 Fourth Memorandum Opinion and Order*, we explained that we would expect requests for waiver to be specific, focused, and limited in scope, with a clear path to full compliance.⁴⁴ We also stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts, including the solutions they considered and why none could be employed in a way that complies with our Phase II rules. Finally, we stated that carriers should not expect to defer implementing a location solution if one is available and feasible.⁴⁵

The Commission expects pending waiver requests to provide supporting evidence as described above.

23 We further stated in the *Non-Nationwide Carriers Order*:⁴⁶

To the extent that . . . carriers that filed for accuracy relief are unable to meet the accuracy standards in the future, we expect to determine whether relief is warranted on a case-by-case basis, once the carriers have filed concrete, specific plans to address the accuracy standards and have presented their testing data and other evidence to demonstrate their inability to meet the accuracy requirements.

24 In order to determine whether a waiver request can be granted consistent with the rules and the explanations set forth in the *E911 Fourth Memorandum Opinion and Order* and the *Non-Nationwide Carriers Order*,⁴⁷ we remind petitioning carriers that they must provide us with clear evidence supporting the grounds upon which their petitions rely. Indeed, as noted above, we will not act on waiver petitions until at least one month from the release date of this Order (but no later than six months from the release date of this Order) in order to allow waiver petitioners additional time to provide the Commission with any supporting evidence that they wish to add to their pending filings, in view of the guidance provided below.

25. For example, to the extent that a carrier bases its request for relief on delaying circumstances beyond its control, the Commission would expect to see specific evidence

⁴² See *Non-Nationwide Carriers Order*, 17 FCC Rcd 14842, para. 6.

⁴³ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17457-58.

⁴⁴ *Id.* at 17457, para. 44

⁴⁵ *Id.* at 17457-58, paras. 44-45

⁴⁶ *Non-Nationwide Carriers Order*, 17 FCC Rcd 14853, para. 41

⁴⁷ *Supra* at n. 42 and n. 44

substantiating this claim, such as documentation of the carrier's good faith efforts to make any needed arrangements with whatever outside sources were necessary to meet the Commission's benchmarks

26. To the extent that a carrier is claiming that it is technically infeasible for it to meet the Commission's accuracy standards throughout its footprint, the Commission should be able to make the factual determinations necessary to find good cause for granting the waiver if the carrier, as we previously stated, provides "concrete, specific plans to address the accuracy standards and ha[s] presented [its] testing data and other evidence to demonstrate [its] inability to meet the accuracy requirements."⁴⁸ This type of evidence would provide a strong showing of technical limitations and/or severe financial hardship. Carriers should avoid blanket statements of technical infeasibility, instead providing technical data on particular portions of their network or pieces of equipment that are problematic.

27. To the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, we also remind the carrier that it should show the Commission "a clear path to full compliance"⁴⁹ by, for example, providing concrete evidence of its genuine commitment to a date certain for that transition to be accomplished. Any documentation of that process could assist the Commission in determining that the path to full compliance has been demonstrated.

28. Also, the Commission expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.

29. Where carriers believe that financial hardship exacerbates any of these possible bases for waiver, we ask that they provide the Commission with sufficient and specific factual information to assess the *bona fides* of the hardship showing. We note, however, that to the extent this information contains data about the carrier's financial condition that is not prepared in accordance with generally accepted accounting principles (GAAP), it is unlikely that the Commission will be able to assign much weight to this data. Moreover, a carrier's justification for a waiver on extraordinary financial hardship grounds will be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from Federal, state, or local sources of funding that are available to it. We note, however, that we generally are disinclined to find that financial hardship alone is a sufficient reason for a delay of E911 responsibilities.

IV. REPORTING REQUIREMENT

30. We extend the reporting requirement adopted in the *Non-Nationwide Carriers Order*

⁴⁸ *Non-Nationwide Carriers Order*, 17 FCC Rcd 14853, para. 41

⁴⁹ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17457, para. 44.

to Tier III carriers listed in the Appendix A 1. and A 2. of this Order.⁵⁰ Extending the reporting requirement to Tier III carriers seeking additional relief should help both the Commission and public safety officials to monitor Phase II deployment more effectively. Currently, Tier III carriers who did not file a waiver request before the release of the *Non-Nationwide Carriers Order* are not required to report on their progress in deploying Phase II. Additionally, we further direct that the Tier III carriers (listed in Appendix B and Appendix C of this Order) requesting additional relief, to file similar E911 Interim Reports. Collecting this information from all of the Tier III carriers with requests for relief should assist the Commission in monitoring the overall progress of E911 deployment more effectively.⁵¹ The reports should also provide useful information to public safety officials. To allow Tier III carriers who have not previously been subject to the reporting requirement adequate time to file an E911 Interim Report, we direct all such carriers listed in the Appendices of this Order, to file an Interim Report no later than January 15, 2004. This report should comply with the directions in the Wireless Telecommunications Bureau's June 30, 2003 Public Notice.⁵²

V. CONCLUSION

31 In this Order, we grant relief to pending waiver petitions from Tier III carriers, to the extent that those petitions request no greater relief than was provided in the *Non-Nationwide Carriers Order*.⁵³ With respect to pending Tier III waiver petitions requesting relief from other provisions of section 20.18 of the rules or for a greater extension of the deployment deadlines than that provided in the *Non-Nationwide Carriers Order*, we stay⁵⁴ the application of sections 20.18(d), (e), (f), (g), and/or (h), as applicable, from September 1, 2003, until we rule on those carriers' waiver petitions or six months from the release date of this Order, whichever is sooner. We will not act on the merits of these waiver petitions until at least one month from the release date of this Order (but no later than six months from the release date of this Order) in order to

⁵⁰ As explained *infra*, those Tier III carriers that requested a stay equivalent to what was granted in the *Non-Nationwide Carriers Order*, but that also requested additional relief are treated as follows. (1) they are granted the same relief as what was granted in the *Non-Nationwide Carriers Order* (i.e., a stay of 13 months from the date of the *Non-Nationwide Carriers Order*), (2) the relief requested beyond these dates is not ruled upon here, but considered a pending waiver request, and (3) these carriers are granted a stay from September 1, 2003, forward until their pending waiver request is ruled upon, or for six months, whichever is earlier.

⁵¹ Wireless Telecommunications Bureau Provides Further Guidance on Interim Report Filings by Small Sized Carriers, CC Docket No. 94-102, *Public Notice*, DA 03-2113 (rel. June 30, 2003).

⁵² *Id.*

⁵³ The carriers fully covered by this relief are listed in Appendix A 1. Those carriers that are granted their requests only in part are listed in Appendix A 2.

⁵⁴ See section 1.44(e) of the rules, which gives the Commission the discretion to grant temporary relief. See also generally section 4(i) of the Communications Act of 1936, 47 U.S.C. § 4(i), which authorizes the Commission to issue orders necessary to execute its functions. We note that petitions specifically requesting a stay, pursuant to sections 1.41 and 1.43 of the rules, as well as other relief, were filed on behalf of rural carriers by a rural association in its representational capacity and by individual counsel. To the extent that the Stay provided by this Order grants the relief provided in the *Non-Nationwide Carriers Order*, requests for relief made pursuant to any other pending petitions are also granted to those carriers requesting no more relief than was granted in that Order. All other matters set forth in the pending Tier III petitions affected by this Order will be considered when the Commission rules on the merits of those petitions. Issues involving the request for waiver of the King County demarcation point, however, will be the subject of a separate proceeding. Any grant of relief or stay that the Commission provides in this Order applies only to those Tier III carriers listed in the Appendices, on the terms provided herein.

allow waiver petitioners additional time to provide the Commission with any supporting evidence that they may wish to add to their pending filings, in view of the guidance provided in this Order. With respect to the Tier III carriers who have petitioned for forbearance under section 10(a) of the Act, we stay the application of section 20.18(h) until the Commission acts on the forbearance petition or six months from the release date of this Order, whichever is sooner.⁵⁵ In the interim, we expect all carriers to continue good faith efforts to deploy E911 as quickly, efficiently, and as extensively as possible. The public interest requires no less.

VI. PAPERWORK REDUCTION ACT (PRA) ANALYSIS AND AMENDMENT

32. With respect to the Tier III carriers required to file Interim Reports on January 15, 2004, this Order incorporates the burdens of previously approved information collection submissions and their revisions [OMB No. 3060-1004]. We will be amending the information collection approved on August 7, 2003, to include the carriers listed in Appendices A, B, and C.

VII. ORDERING CLAUSES

33. Accordingly, pursuant to the Commission's exercise of its authority under section 1.3 of the Commission's rules, IT IS ORDERED that the Tier III carriers listed in Appendix A of this Order that request no greater relief than was granted in the *Non-Nationwide Carriers Order*, must comply with this Order and the modified deadlines for Phase II compliance under sections 20.18(f) and (g) and related conditions set forth in the paragraphs 26-27 and 32-33 of the *Non-Nationwide Carriers Order*.⁵⁶

34 IT IS ALSO ORDERED that for each carrier who has petitioned for temporary waiver pursuant to sections 1.3 and 1.925 of the rules that is beyond the deadlines set forth in the *Non-Nationwide Carriers Order*, of the accuracy, reliability, and deployment requirements set forth in sections 20.18(d), (e), (f), (g), and/or (h) of the rules are hereby STAYED from September 1, 2003, until the date the Commission rules on that carrier's waiver petition or six months from the release date of this Order, whichever is sooner.

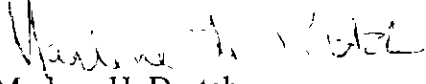
35 IT IS FURTHER ORDERED that for those Tier III carriers who have requested that the Commission temporarily forbear from application of section 20.18(h), as an exercise of its statutory forbearance authority under section 10(a) of the Communications Act of 1936, as amended, the specific E911 Phase II accuracy and reliability requirements set forth in section 20.18(h) of the rules are hereby STAYED from September 1, 2003, until the Commission acts on the forbearance petition or six months from the release date of this Order, whichever is sooner.

⁵⁵ Under section 10(c) of the Act, any forbearance petition filed under section 10 shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a). 47 U.S.C. § 160(c). The Commission received the petition for forbearance at issue on November 19, 2002, accordingly, the one-year period ends on November 19, 2003, unless extended.

⁵⁶ *Non-Nationwide Carriers Order*, 17 FCC Rcd 14849, paras. 26-27 and 17 FCC Rcd 14851, paras. 32-33 for the schedule of implementation dates provided in that *Order*.

36. IT IS FURTHER ORDERED that the Tier III carriers listed in Appendices A, B, and C of this Order must file an Interim Report no later than January 15, 2004, on their progress and anticipated compliance with the terms and conditions of the implementation plan and the wireless E911 rules.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

Appendix A⁵⁷**1. Petitions for Stay or Waiver of the Requirements of Section 20.18(f) and (g) of the Rules Seeking the Same or Similar Relief Granted in the *Non-Nationwide Carriers Order***

1. Amarillo License, L.P. and High Plains Wireless, L.P.
2. Cellular Phone of Kentucky, Inc.
3. CompScape Telecommunications of Wilmington License, Inc.
4. Duluth PCS, Inc.
5. Elkhart Telephone Co d/b/a Epic Touch Co.
6. Litchfield County Cellular, Inc d/b/a Ramcell of Oregon
7. North Carolina RSA 1 Partnership
8. NSP LC

2. Petitions for Stay and/or Waiver of the Requirements of Section 20.18(d), (e), (f), (g), and/or (h) of the Rules Seeking More Extensive Relief, as well as the Relief That Was Granted in the *Non-Nationwide Carrier Order*

1. Alaska DigiTel, LLC
2. Cellular South Licenses, Inc.
3. Chama Communications Corp , filing jointly with Chama Wireless, LLC, Commnet Capital, LLC, Commnet of Arizona, Commnet of Delaware, LLC, Commnet of Florida, LLC, Commnet PCS, Inc., Commnet Wireless, Inc., Elbert County Wireless, LLC, Excomm, LLC, Grizzly Bear Wireless Corp., Indian Hills Wireless, Inc., MoCelCo, LLC, Prairie Wireless, LLC, and Tennessee Cellular Telephone Company
4. Great Western Cellular Holding, L.L.C.
5. Key Communications, LLC and Keystone Wireless, LLC
6. Litchfield County Cellular, Inc.
7. MobileTel, LLC
8. North Dakota PCS Alliance
9. Northwest Missouri Cellular Limited Partnership
10. Public Service Cellular, Inc and Enterprise Wireless PCS, L.L.C.
11. Rural Telecommunications Group
12. Southern Illinois RSA Partnership d/b/a First Cellular of Illinois
13. Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless

⁵⁷ These Carriers were not covered by the *Non-Nationwide Carrier Order*

Appendix B**Carriers Granted a Stay under the *Non-Nationwide Carrier Order* That Are Requesting Additional Relief**

1. Arctic Slope Telephone Association Cooperative, Inc.
2. Bachow/Coastel, L.L.C.
3. Blanca Telephone Company
4. Cellular Mobile Systems of St. Cloud, LLC
5. Copper Valley Wireless
6. Cordova Wireless
7. Corr Wireless Communications, LLC
8. Edge Wireless
9. Highland Cellular, LLC
10. Iowa RAS 2 Limited Partnership d/b/a Lyrix Wireless
11. Leaco Rural Telephone Cooperative, Inc.
12. Minnesota Southern Wireless Company d/b/a HickoryTech
13. Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services
14. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular
15. N.E. Colorado Cellular, Inc., NECO PCS, Inc., and Wireless II, LLC
16. OTZ Telecommunications, Inc.
17. Public Service Cellular, Inc.
18. RSA 1 Limited Partnership d/b/a Cellular 29 Plus
19. Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication Systems, Inc.
20. South Canaan Cellular Communications Company, L.P.
21. South No. 5 RSA LP d/b/a Brazos Cellular Communications, LLC
22. Sussex Cellular, Inc.
23. Wilkes Cellular, Inc.
24. Wireless Communications Venture

Appendix CPetition for Forbearance from the Accuracy Requirements of Section 20.18(h) of the Rules

(Tier III Coalition for Wireless E911)

1. Cal-One Cellular L P
2. California RSA #3 Limited Partnership, A California Corporation d/b/a Mountain Cellular
3. El Dorado Cellular, A California Corporation d/b/a Mountain Cellular
4. Illinois Valley Cellular RSA 2-I Partnership d/b/a Illinois Valley Cellular
5. Illinois Valley Cellular RSA 2-II Partnership d/b/a Illinois Valley Cellular
6. Illinois Valley Cellular RSA 2-III Partnership d/b/a Illinois Valley Cellular
7. Iowa RSA No. 2 Limited Partnership d/b/a Lyrinx Wireless
8. Minnesota Southern Cellular Telephone Company d/b/a Hickory Tech Wireless
9. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular
10. Northwest Missouri Cellular Limited Partnership
11. Public Service Cellular, Inc.
12. RSA 1 Limited Partnership d/b/a Cellular 29 Plus

See Attachment:

DISCUSSION OF SMALL BUSINESS IMPLICATIONS

Because of the impact on the national public safety, and because the petitioners affected by this Order to Stay (Order) are small carriers, the Commission provides this discussion.⁵⁸ The actions taken in the Order respond to requests for relief from certain provisions of the Phase II Enhanced 911 (E911) regulations filed by several non-nationwide commercial wireless carriers. In granting a temporary stay from the application of the interim handset and network upgrade compliance deadlines for these mid-sized and small carriers, the Commission hopes to provide them with some relief from the disadvantages they face in competing with nationwide carriers for technology necessary to implement E911. The extension of time granted to these carriers is likely to positively impact not only the carriers, but public safety answering points and equipment manufacturers as well, as discussed more fully below.

The small, non-nationwide carriers asked the Commission for relief from the pending deadlines for E911 Phase II interim handset and network upgrade deployment. The Commission believes that the extension granted in the Order will not only benefit the affected carriers, but will also provide equipment manufacturers with more time to satisfy all of their customers' needs, regardless of size. Most important, the Commission grants this relief without delaying the ultimate E911 implementation date of December 31, 2005.

⁵⁸ This Order is not a rulemaking decision and therefore does not fall within the provisions of the Regulatory Flexibility Act of 1980 as amended. See 5 U.S.C. § 604.